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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/868,680	08/20/2001	Klaus Pfaffelhuber	MUE-0002	3010

7590 04/06/2006
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EXAMINER

SAN MARTIN, EDGARDO

ART UNIT	PAPER NUMBER
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2837

DATE MAILED: 04/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/868,680

Applicant(s)

PFAFFELHUBER ET AL.

Examiner

Edgardo San Martin

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 January 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 36-59 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 36-59 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 36, 38 – 40, 43, 44 and 53 are rejected under 35 U.S.C. 102(b) as being anticipated by Clarke et al. (EP 0 897 175).

With respect to claims 36, 38 and 53, Clarke et al. teach a sound-shielding element for covering at least one of sound-reflecting or sound-generating structural parts and method of producing it, comprising at least one panel or layer; a plurality of small perforations formed in the at least one panel or layer; wherein an average diameter or width of the perforations ranges between 0.001 and 0.7 mm and a hole/surface ratio ranges between 0.001 and 8% so that the sound waves entering the perforations initiate physical effects in a gas volume contained in the perforations and wherein the panel has a thickness between 0.05 and 1 mm (Figs. 1 and 2; Col.2, Line 49 – Col.3, Line 38).

With respect to claims 38 - 40, 43 and 44, the Examiner considers that Clarke et al. teach the limitations described in the claims (Figs. 1 – 3; Col.3, Lines 3 – 38).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 37, 41, 42, 45 – 52 and 54 – 59 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clarke et al. (EP 0 897 175).

With respect to claims 37, 41, 42, 46 and 54 - 59, Clarke et al. teach the limitations discussed in a previous rejection, but fail to disclose the subject matter described in the mentioned claims.

Nevertheless, the Examiner considers that it would have been an obvious matter of design choice to employ different types of well known manufacturing processes to form the panel because the presence of process limitations, which product does not otherwise patentably distinguish over prior art, cannot impart patentability to the product. In re Stephens 145 USPQ 656 (CCPA 1965). Furthermore, the method of forming the panel is not germane to the issue of patentability of the device itself. Therefore, this limitation has been given little patentable weight.

With respect to claims 45 – 52, Clarke et al. teach the limitations discussed in a previous rejection, but fail to disclose the subject matter described in the mentioned claims.

On the other hand, the Examiner considers that it would have been an obvious matter of design choice to employ the panel in different well known acoustical applications because it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex Parte Masham*, 2 USPQ F.2d 1647 (1987).

Response to Arguments

3. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection. The Examiner considers that the patent to Clarke et al. teach the limitations described in the claims as discussed above.

Conclusion

4. The attached hereto PTO Form 892 lists prior art made of record that the Examiner considered it pertinent to applicant's disclosure.

Contact Information

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Edgardo San Martin whose telephone number is (571) 272-2074. The examiner can normally be reached on 8:00AM - 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paula Bradley can be reached on (571) 272-2800 ext.33. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Edgardo San Martín', is positioned above the printed name and title.

Edgardo San Martín
Primary Examiner
Art Unit 2837
Class 181
April 3, 2006